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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/751,070	01/02/2004	Lynette Damir	SWAD-1-1002	1245
7590 08/11/2004			EXAMINER	
Mark L. Lorbiecki, Esq. BLACK LOWE & GRAHAM PLLC Suite 4800 701 Fifth Avenue Seattle, WA 98104			HALE, GLORIA M	
			ART UNIT	PAPER NUMBER
			3765	

DATE MAILED: 08/11/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/751,070

Applicant(s)

DAMIR ET AL.

Examiner

Gloria Hale

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-50 is/are pending in the application.
- 4a) Of the above claim(s) 1-38 is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 39-50 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. ____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date ____.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date ____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: ____.

Election/Restrictions

DETAILED ACTION

Restriction to one of the following inventions is required under 35 U.S.C.

121:

- I. Claims 1-38, drawn to a method of instruction and Guide to swaddle a baby, classified in class 434, subclass 395
- II. Claims 39-50, drawn to a baby's sleeping blanket/garment, classified in class 2, subclass 69.5.

The inventions are distinct, each from the other because of the following reasons:

Inventions II and I are related as product and process of use. The inventions can be shown to be distinct if either or both of the following can be shown: (1) the process for using the product as claimed can be practiced with another materially different product or (2) the product as claimed can be used in a materially different process of using that product (MPEP § 806.05(h)). In the instant case the product can be used to wrap other items other than swaddling a baby and the process can be done without the inventive blanket/product.

Because these inventions are distinct for the reasons given above and have acquired a separate status in the art as shown by their different classification, restriction for examination purposes as indicated is proper.

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Because these inventions are distinct for the reasons given above and the search required for Group I is not required for Group II, restriction for examination purposes as indicated is proper.

Because these inventions are distinct for the reasons given above and have acquired a separate status in the art because of their recognized divergent subject matter, restriction for examination purposes as indicated is proper.

During a telephone conversation with Mark Lorbiecki on August 5, 2004 a provisional election was made without traverse to prosecute the invention of Group II, claims 39-50 to the blanket. Affirmation of this election must be made by applicant in replying to this Office action. Claims 1-38 withdrawn from further consideration by the examiner, 37 CFR 1.142(b), as being drawn to a non-elected invention.

Applicant is reminded that upon the cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 CFR 1.48(b) if one or more of the currently named inventors is no longer an inventor of at least one claim remaining in the application. Any amendment of inventorship must be accompanied by a request under 37 CFR 1.48(b) and by the fee required under 37 CFR 1.17(i).

Specification

The use of the trademark VELCRO has been noted in this application. It should be capitalized wherever it appears and be accompanied by the generic terminology in this case – hook and loop fastener.

Although the use of trademarks is permissible in patent applications, the proprietary nature of the marks should be respected and every effort made to prevent their use in any manner which might adversely affect their validity as trademarks.

The disclosure is objected to because of the following informalities: the specification includes two different reference numbers for the diaper bag- 30 and 32 on page 5 and in figure 4.

Appropriate correction is required.

Drawings

The drawings are objected to as failing to comply with 37 CFR 1.84(p)(4) because reference characters "30" and "32" have both been used to designate the diaper bag. Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The replacement sheet(s) should be labeled "Replacement Sheet" in the page header (as per 37 CFR 1.84(c)) so as not to obstruct any portion of the drawing figures. If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 39-50 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In regard to claim 39 the claim appears to be incomplete in that the claim begins with a description of a second illustration and does not include the first illustration. It is not clear as to whether the first illustration is necessary to complete the invention in order for the invention to function. One usually starts with an element numbered 1 and not 2. Also it is not clear as to how the illustrations are structured in combination with a blanket. The present claim only claims a blanket and does not claim whether the illustrations are attached to or part of the blanket or are just in an unattached state such as printed matter which includes directions which are common when purchasing many products. In claim 44 it appears that language is missing after the word "position". In claims 39-50 it is not clear as to what the term "illustration" encompasses.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 39-42 and 44-50 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hickling (US 3,693,290) in view of Ketch (US 5,282,749).

In regard to claims 39-42 and 44-50 Hickling discloses a infant swaddling blanket with a label 20 which indicates where an infants head is to be placed when swaddling the infant. The snaps which indicate connection locations also indirectly and inherently indicate fold lines that occur when the fasteners are connected to swaddle the infant. However, Hinkling does not specifically disclose the "illustrations" as being printed, embroidered, embossed, appliquéd or woven in or on the blanket. Ketch discloses the use of illustrations to indicate the folding of garments. Accordingly it would have been obvious to one having ordinary skill in the art at the time the invention was made to use fold line indicators as disclosed by Ketch adjacent to the fastener components of Hinkling in order to assist a user in the folding of the swaddling blanket and to use any known indicia application methods such as those listed which are well known in garment/ textile construction to attach indicia to an item. (See Hinkling, col. 2, line 34 – col. 3, line 63 and figures 1-7 and Ketch, col. 3, line 17 – col. 4, line 45; col. 7, line 65-68 and figures 1A-1F).

Claim 43 would be allowable if rewritten to overcome the rejection(s) under 35 U.S.C. 112, 2nd paragraph, set forth in this Office action and to include all of the limitations of the base claim and any intervening claims. None of the cited references alone or in combination disclose the illustrations as being detachably connected. The entire sequence of illustrations necessary to perform

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the entire swaddling of the infant should be claimed. Since all of the illustrations are necessary to perform the function of swaddling the infant the first illustration should be included in the independent claim and the steps should be included in consecutive order. The illustrations should be claimed in more specific terms such as drawings, labels or appliques and with written instructions. The present claims are extremely broad and only claim a blanket with printed matter thereon. Any blanket with printed on designs can be used to indicate where a fold is desired to wrap the infant. The specific illustrations and markings on the blanket where folds are to occur should be included. The present recitation "for a first fold...etc." is only intended use and does not clearly claim the indicia necessary to make the first fold and folds thereafter. Suggested claim language would be to claim "A blanket for swaddling an infant in combination with instructional indicia thereon to instruct a user as to how to swaddle an infant comprising: a blanket; a first illustration with an instruction thereon to locate and instruct the placement of an infant on the flat blanket; a second illustration to locate and instruct the folding of a first fold line and folding of the blanket over the infant; a third illustration to locate and instruct the folding of a second fold line and folding of the blanket over the infant ... "etc. continuing with the claim language describing each fold and fold lines necessary until all folds are made and the infant is swaddled.

Conclusion


The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Gloria Hale whose telephone number is 703-308-1282. The examiner can normally be reached on Tuesday-Friday.

The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


Gloria Hale
Primary Examiner
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